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APR 21 2005

OFFICE OF PETITIONS

In re Application of
Lederman et al.
Application No. 09/992,235
Filed: November 6, 2001
Attorney Docket No. 2516-1-002N

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 22, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the non-final Office action mailed August 25, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on November 26, 2003. A Notice of Abandonment was mailed April 16, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition² under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

² See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item (1). Petitioner has failed to provide a proper response to the Office action mailed on August 25, 2003. As stated under 37 CFR 1.111(b), in order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. Accordingly, a proper response is required to revive the above-identified application.

Further, petitioner submitted an Issue Fee Transmittal (PTOL-85b) with the instant petition on March 22, 2005, along with the \$700.00 issue fee. However, a Notice of Allowance and a Notice of Allowability have yet to be issued by the Examiner of record in the instant application. Accordingly, the \$700.00 issue fee will be refunded by treasury check to the petitioner in due course.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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By hand: Customer Window located at:

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 Customer Service Window Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (703) 872-9306
 ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.



Liana Chase
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy